

2005 DRAFTING REQUEST

Bill

Received: **09/27/2004**

Received By: **jkreye**

Wanted: **As time permits**

Identical to LRB: **01-1028/3**

For: **Administration-Budget**

By/Representing: **Justus**

This file may be shown to any legislator: **NO**

Drafter: **jkreye**

May Contact:

Addl. Drafters:

Subject: **Tax, Other - sales**

Extra Copies:

Submit via email: **YES**

Requester's email:

Carbon copy (CC:) to: **joseph.kreye@legis.state.wi.us**

Pre Topic:

DOA:.....Justus, BB0069 -

Topic:

Sales tax collected by nonprofit retailers; increase occasional sales threshold

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	jkreye 09/27/2004	kfollett 09/30/2004 kfollett 09/30/2004		_____			S&L Tax
/1			rschluet 10/01/2004	_____	lnorthro 10/01/2004		S&L Tax
/2	jkreye 10/18/2004	kfollett 10/21/2004	rschluet 10/22/2004	_____	sbasford 10/22/2004		S&L Tax

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
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jkreye	kfollett						
10/29/2004	10/29/2004						

/3			pgreensl		lnorthro		
			10/29/2004		10/29/2004		

FE Sent For:

<END>

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/?	jkreye 09/27/2004	kfollett 09/30/2004 kfollett 09/30/2004	<i>10/28</i>	<i>10/28</i>			S&L Tax
/1		<i>13 15/1</i> <i>10/28</i>	rschluet 10/01/2004 <i>p8</i>	<i>10/28</i> <i>p8713</i>	lnorthro 10/01/2004		S&L Tax

LRB-0297

10/22/2004 10:35:01 AM

Page 2

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/2	jkreye 10/18/2004	kfollett 10/21/2004	rschluet 10/22/2004	_____	sbasford 10/22/2004		

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DOA:.....Justus, BB0069 -

Topic:

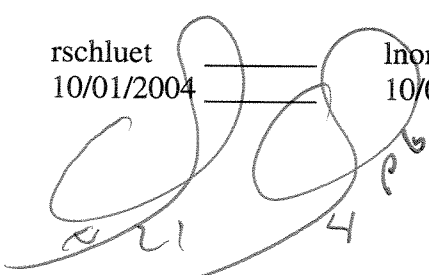
Sales tax collected by nonprofit retailers; increase occasional sales threshold

Instructions:

See Attached

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<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	jkreye 09/27/2004	kfollett 09/30/2004 kfollett 09/30/2004		_____ _____ _____ _____			S&L Tax
/1		12 kjf 10/29	rschluet 10/01/2004	_____ _____ _____ _____	lnorthro 10/01/2004		



LRB-0297

10/01/2004 11:37:26 AM

Page 2

Vers. Drafted Reviewed Typed Proofed Submitted Jacketed Required

FE Sent For:

<END>

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/?	jkreye	11/15/04 9/30/04					
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FE Sent For:

 **<END>**

BB0069

05-0297

2003-05 Budget Bill Statutory Language Drafting Request

- Topic: Clarify non-profit retailers and increase occasional sales threshold
- Tracking Code: (Assigned by Government Operations Team)
- SBO team: Tax & Justice
- SBO analyst: Sarah Justus
 - Phone: 7-6921
 - Email: sarah.justus@doa.state.wi.us
- Agency acronym: DOR
- Agency number: 566

**Statutory Language Request
Wisconsin Department of Revenue**

**TITLE: CLARIFY THE DEFINITION OF NON-PROFIT RETAILERS AND INCREASE
OCCASIONAL SALES THRESHOLD**

DESCRIPTION OF CURRENT LAW AND PROBLEM

Issue 1:

Decisions in two court cases, *Kollasch v. Adamany* (104 Wis. 2d 552, 562 (1981)) and *American Heart Association/Wisconsin Affiliate, Inc. v Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, July 24, 1998), provide that a nonprofit organization engaging in "nonmercantile transactions" is not a "retailer" with respect to those transactions as provided in secs. 77.51(13) and 77.52(1), Wis. Stats., and, therefore, is not liable for the sales tax on those transactions, even though the organization may hold a seller's permit. In addition, the litigation in *Kollasch* dealt specifically with whether or not the Sisters of St. Benedict had to obtain a seller's permit at all. The Court in that case ultimately held that since the transactions were "nonmercantile," no seller's permit was needed.

The courts looked at a number of factors in determining whether transactions were mercantile (profit motive, competition with private sector, purpose of activity, advertising) but gave little guidance in how it determined based on those factors what transactions are mercantile.

These cases cause uncertainty for taxpayers and the Department of Revenue in determining whether transactions are taxable (mercantile or nonmercantile). They create a potential revenue loss because taxpayers (both for-profit and nonprofit) are increasingly making claims under these decisions that some of their otherwise taxable sales are nonmercantile and, therefore, not subject to Wisconsin sales tax. These taxpayers generally only look to profit motive on a transaction basis and are giving little weight to other factors discussed in the court decisions.

Issue 2:

Nonprofit organizations making sales of tangible personal property or taxable services are required to register and collect sales tax on such sales unless they qualify for the occasional sale exemption. Generally, a nonprofit organization, including governmental units, will meet the occasional sale if (1) they don't currently hold a seller's permit, (2) taxable sales or events occur on 20 days or less in a calendar year or gross receipts from taxable sales are \$15,000 or less during a calendar year, (3) sales are not made at an admission event where entertainment is paid more than \$300. (sec. 77.54(7m), Wis. Stats. (2001-02))

The \$15,000 and \$300 standards in sec. 77.54(7m), Wis. Stats. (2001-02), have not been adjusted for inflation since they went into effect on January 1, 1989.

RECOMMENDATION FOR ACTION

1. Provide that a person who makes sales of tangible personal property or taxable services is a retailer, regardless of whether or not the transaction is mercantile. Sales of tangible personal property or taxable services are subject to Wisconsin sales or use tax, unless a specific exemption applies (e.g., occasional sale by nonprofit organization).
2. Increase occasional sale exemption standards for nonprofit organizations from \$15,000 to \$25,000 and from \$300 to \$500 to account for inflation since the time the exemption was created.

ADMINISTRATIVE IMPACT

Removing the sometimes subjective tests that determine who is a retailer, which may lead to a determination that a person is a retailer for one type of product sold and not a retailer for another, will eliminate uncertainty for taxpayers and the Department of Revenue and allow consistent application of the sales tax.

FAIRNESS /TAX EQUITY

- It is not fair that a person selling a taxable item is a retailer because they make a profit selling an item while another person who sells the exact same item may not be a retailer because no profit is made. Those willing to accept no profit on certain items they sell (loss leaders, close-out sales) are at a competitive advantage if they do not have to collect the 5% sales tax.
- All persons selling tangible personal property and taxable services should be treated equally – sales of tangible personal property and taxable services should be taxable unless an exemption has been granted by the Legislature.
- The Legislature recognized that nonprofit organizations were retailers and created the occasional sale exemption to give tax breaks to smaller nonprofit organizations that may not be in direct competition with other retailers. Increasing the standards the legislature set in 1989 is only fair because of increases in prices.

IMPACT ON ECONOMIC DEVELOPMENT

None expected as it will currently affect only a small segment of retailers.

FISCAL EFFECT

Removing a mercantile standard will result in additional sales tax being collected by retailers who are currently not collecting sales tax on certain transactions. However, increasing the occasional sale exemption standards will reduce the amount of sales tax collected by nonprofit organizations. It is anticipated that the overall fiscal impact will be a minimal revenue increase; however, it is impossible to measure.

DRAFTING INSTRUCTIONS

See Attachment 1 for a 2001 LRB draft (1028/3) that was approved by the division in 2000. The increased dollar standards are computed as follows:

- The Consumer Price Index for All Urban Consumers, US City Average, was 121.1 in January 1989
- The CPI for All Urban Consumers, US City Average, was 189.7 in June 2004
- The percentage change in Consumer Price Index is 1.566 (189.7/121.1)
- The new gross receipts standard, rounded to the nearest \$5,000, is \$25,000 ($\$15,000 \times 1.566 = 23,490$)

Alternative – Round to the next \$10,000 so that the new gross receipts standard would be \$30,000

- The new entertainment standard, rounded to the nearest \$100, is \$500 ($\$300 \times 1.566 = \470)

Alternative – Round to the next \$1,000 so that the new entertainment standard is \$1,000.

EFFECTIVE DATE AND/OR INITIAL APPLICABILITY

Because determining whether the occasional sale exemption standards are exceeded is done on a calendar year basis, the effective date should be January 1, 2006.

INTERESTED/AFFECTED PARTIES

Large nonprofit organizations that are currently aware and using the *Kollasch* and *American Heart* decisions, if determined that some of their sales are not taxable, are the most likely to be adversely affected by the change. For example, the American Heart Association, who exceeds the occasional sales exemption standards, will be required to collect tax on sales of its heart literature to organizations who are not entitled to an exemption.

Small nonprofit organizations will be supportive because they may now qualify for the occasional sale exemption where in the past they had exceeded the standards set by statute.

Its unknown whether any for-profit businesses are contemplating tax savings for certain transactions based on a mercantile argument under the decisions discussed above.

DOR CONTACT PERSON

Diane Hardt
(608) 266-2772
dhardt@dor.state.wi.us

PREPARED BY

Vicki L. Gibbons
(608) 266-3873
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Soon

0297/1

2001 - 2002 LEGISLATURE

LRB-1028/3

JK:kmg:km

DOA - budget

2001 BILL

in 9-27-04

PWF

anal: title: head
anal: title: sub
TAXATION
OTHER TAXATION

Do Not Gen

- 1 AN ACT *to amend* 77.51 (13) (a) and 77.54 (7m) of the statutes, relating to:
- 2 ~~retailers and the sales of tangible personal property and services.~~ *to the budget*

percent
Analysis by the Legislative Reference Bureau

Under current law, the state imposes a sales tax on all retailers at the rate of 5% of the gross receipts from the sale, lease, or rental of tangible personal property and the sale of certain services. For sales tax purposes, a retailer includes a seller who sells any tangible personal property or taxable service. A retailer who is subject to the sales tax must obtain a seller's permit, collect the sales tax, and remit the collected tax to the department of revenue. The Wisconsin supreme court has held that a religious organization that sells tangible personal property is not a retailer subject to the sales tax, if the sales that the religious organization makes are not mercantile in nature. See *Kollasch v. Adamany*, 104 Wis.2d 552 (1981).

Under this bill, a retailer who is subject to the sales tax includes a person who makes any sale, regardless of whether the sale is mercantile in nature, of tangible personal property or certain services.

Under current law, a nonprofit organization that sells tangible personal property or services is required to have a seller's permit, if it sells property or services on more than 20 days during the year and the gross receipts from such sales exceed \$15,000. Under the bill, a nonprofit organization that sells tangible personal property or services is required to have a seller's permit, if it sells property or services on more than 20 days during the year and the gross receipts from such sales exceed \$25,000.

Under current law, the sale of admissions made by a nonprofit organization to an event involving entertainment is exempt from the sales tax and the use tax, if the

DOR

X
X

BILL

organization's payment for the entertainment does not exceed \$300. Under the bill, the sale of admissions made by a nonprofit organization to an event involving entertainment is exempt from the sales tax and the use tax, if the organization's payment for the entertainment does not exceed \$500.

This bill will be referred to the joint survey committee on tax exemptions for a detailed analysis, which will be printed as an appendix to this bill.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 77.51 (13) (a) of the statutes is amended to read:

77.51 (13) (a) Every seller who makes any sale, regardless of whether the sale is mercantile in nature, of tangible personal property or taxable a service specified under s. 77.52 (2) (a).

SECTION 2. 77.54 (7m) of the statutes is amended to read:

77.54 (7m) Occasional sales of tangible personal property or services, including ~~but not limited to~~ admissions or tickets to an event; by a neighborhood association, church, civic group, garden club, social club or similar nonprofit organization; not involving entertainment for which payment in the aggregate exceeds ~~\$300~~ \$500 for performing or as reimbursement of expenses unless access to the event may be obtained without payment of a direct or indirect admission fee; conducted by the organization if the organization is not engaged in a trade or business and is not required to have a seller's permit. For purposes of this subsection, an organization is engaged in a trade or business and is required to have a seller's permit if its sales of tangible personal property and services, not including sales of tickets to events, and its events occur on more than 20 days during the year, unless its receipts do not exceed ~~\$15,000~~ \$25,000 during the year. The exemption under this subsection does

BILL

1 not apply to gross receipts from the sale of bingo supplies to players or to the sale,
2 rental or use of regular bingo cards, extra regular cards and special bingo cards.

3 *change components* *NS: 94 XX* *9441* *revenue*
SECTION 3. Effective date.

4 *NS: eff date* *→* (1) ~~This act takes effect on the first day of the 2nd month beginning after~~
5 publication

6 (END)

NONRESIDENT RETAILER AND OCCASIONAL SALES. The treatment of
sections 77.51(13)(a) and 77.54(7m) of the statutes
take effect on January 1, 2006

Kreye, Joseph

From: Justus, Sarah
Sent: Friday, October 15, 2004 3:46 PM
To: Kreye, Joseph
Subject: FW: Comments on LRB 0297/1 - Clarify Definition of Non-Profit Retailers and Increase Occasional Sales Threshold



05-02971.pdf

Please see the comments in the word document. It looks as this is an older document that was only partially updated, I believe the relevant comments are under item #4.
Sarah

-----Original Message-----

From: Lashore, Patricia M
Sent: Friday, October 15, 2004 3:40 PM
To: Justus, Sarah
Cc: Parker, James A
Subject: Comments on LRB 0297/1 - Clarify Definition of Non-Profit Retailers and Increase Occasional Sales Threshold

Here are comments on the above draft.



ATT267427.txt



0297-1 -
tercantile; nonprofit.

Fiscal Note Analysis?

Yes ☐

No ☐

Division: **IS&E**

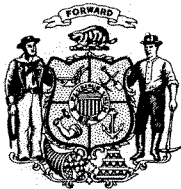
Assigned to: Vicki Gibbons	Date: October 1, 2004	Due Date:
Prepared by: Vicki Gibbons	Date: October 15, 2004	<i>(analysis should generally be prepared within 1 week of assignment)</i>
Reviewed by:	Date:	

- ## Sales and use tax

- This bill removes the requirement that mercantile intent must be shown for a person making sales of tangible personal property or taxable services to be considered a retailer subject to Wisconsin sales or use tax. It also increases the thresholds for determining whether sales or tangible personal property and taxable services by nonprofit organizations are exempt occasional sales.

- When a nonprofit organizations holds an admission event at which entertainment is paid more than \$300, the occasional sale exemption does not apply to **all** sales of tangible personal property and taxable services at the event (not just the admission). The statute also doesn't require that the nonprofit make payment for the entertainment. The statute only requires that the entertainment be paid. Therefore, the first full paragraph on page 2, should be revised to read:

5. **Effective date problems, if any, including transitional problems:** Yes X No
(If yes, describe problem and suggested effective date or transitional language needed.)



State of Wisconsin
2005 - 2006 LEGISLATURE

LRB-0297/1

JK:kjf:rs

RMR

DOA:.....Justus, BB0069 - Sales tax collected by nonprofit retailers; increase occasional sales threshold

FOR 2005-07 BUDGET -- NOT READY FOR INTRODUCTION

10-18-09

Do Not Gen

1 AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau

TAXATION

OTHER TAXATION

Under current law, the state imposes a sales tax on all retailers at the rate of 5 percent of the gross receipts from the sale, lease, or rental of tangible personal property and the sale of certain services. For sales tax purposes, a retailer includes a seller who sells any tangible personal property or taxable service. A retailer who is subject to the sales tax must obtain a seller's permit, collect the sales tax, and remit the collected tax to DOR. The Wisconsin Supreme Court has held that a religious organization that sells tangible personal property is not a retailer subject to the sales tax, if the sales that the religious organization makes are not mercantile in nature. See *Kollasch v. Adamany*, 104 Wis. 2d 552 (1981).

Under this bill, a retailer who is subject to the sales tax includes a person who makes any sale, regardless of whether the sale is mercantile in nature, of tangible personal property or certain services.

Under current law, a nonprofit organization that sells tangible personal property or services is required to have a seller's permit, if it sells property or services on more than 20 days during the year and the gross receipts from such sales exceed \$15,000. Under the bill, a nonprofit organization that sells tangible personal

property or services is required to have a seller's permit, if it sells property or services on more than 20 days during the year and the gross receipts from such sales exceed \$25,000.

Under current law, the ~~sale of admissions~~ made by a nonprofit organization ~~to~~ ^{at} an event involving entertainment is exempt from the sales tax and the use tax, if the organization's payment for the entertainment does not exceed \$300. Under the bill, the ~~sale of admissions~~ made by a nonprofit organization ~~to~~ ^{at} an event involving entertainment is exempt from the sales tax and the use tax, if the organization's payment for the entertainment does not exceed \$500.

This bill will be referred to the Joint Survey Committee on Tax Exemptions for a detailed analysis, which will be printed as an appendix to this bill.

For further information see the **state and local** fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 77.51 (13) (a) of the statutes is amended to read:

2 77.51 (13) (a) Every seller who makes any sale, regardless of whether the sale
3 is mercantile in nature, of tangible personal property or taxable a service specified
4 under s. 77.52 (2) (a).

5 **SECTION 2.** 77.54 (7m) of the statutes is amended to read:

6 77.54 (7m) Occasional sales of tangible personal property or services, including
7 ~~but not limited to~~ admissions or tickets to an event; by a neighborhood association,
8 church, civic group, garden club, social club or similar nonprofit organization; not
9 involving entertainment for which payment in the aggregate exceeds \$300 \$500 for
10 performing or as reimbursement of expenses unless access to the event may be
11 obtained without payment of a direct or indirect admission fee; conducted by the
12 organization if the organization is not engaged in a trade or business and is not
13 required to have a seller's permit. For purposes of this subsection, an organization
14 is engaged in a trade or business and is required to have a seller's permit if its sales
15 of tangible personal property and services, not including sales of tickets to events,

1 and its events occur on more than 20 days during the year, unless its receipts do not
2 exceed ~~\$15,000~~ \$25,000 during the year. The exemption under this subsection does
3 not apply to gross receipts from the sale of bingo supplies to players or to the sale,
4 rental or use of regular bingo cards, extra regular cards and special bingo cards.

5 **SECTION 9441. Effective dates; revenue.**

6 (1) NONRESIDENT RETAILER AND OCCASIONAL SALES. The treatment of sections
7 77.51 (13) (a) and 77.54 (7m) of the statutes takes effect on January 1, 2006.

8 (END)

Kreye, Joseph

From: Justus, Sarah
Sent: Friday, October 22, 2004 3:59 PM
To: Kreye, Joseph
Subject: FW: LRB Draft: 05-0297/2 Sales tax collected by nonprofit retailers; increase occasional sales threshold

Here are some further comments on the draft from DOR.
Sarah

-----Original Message-----

From: Lashore, Patricia M
Sent: Friday, October 22, 2004 3:56 PM
To: Justus, Sarah
Subject: FW: LRB Draft: 05-0297/2 Sales tax collected by nonprofit retailers; increase occasional sales threshold

Comments on the latest draft.



0297-2 -
mercantile; nonprofit.

DIVISION ANALYSIS OF LEGISLATION (Form 1)

Fiscal Note Analysis? Yes ☐
No ☐

email completed copies to:
Sherrie Gates-Hendrix (Sec Office)
Rpfsn@dor.state.wi.us

Division: IS&E

For Division Use:

Assigned to: Vicki Gibbons	Date: October 22, 2004	Due Date:
Prepared by: Vicki Gibbons	Date: October 22, 2004	(analysis should generally be prepared within 1 week of assignment)
Reviewed by:	Date:	

1. **Bill and/or LRB Number:** 2005-06 LRB 0297/2 – Clarify Definition of Non-Profit Retailers and Increase Occasional Sales Threshold

2. **Type of Taxes Affected:** (please list all that apply)

Sales and use tax

3. **Description of the Bill:** (briefly describe the subject matter of the bill and the change/s)

This bill removes the requirement that mercantile intent must be shown for a person making sales of tangible personal property or taxable services to be considered a retailer subject to Wisconsin sales or use tax. It also increases the thresholds for determining whether sales or tangible personal property and taxable services by nonprofit organizations are exempt occasional sales.

4. **Statutory language problems, if any:** _____ Yes X No

(If yes, describe problems and indicate suggested corrective language. Example of problem: The bill language is unclear, does not fully accomplish the desired result, or has undesirable side effects.)

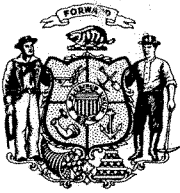
Changes were suggested previously to the bill analysis of 0297/1. In lieu of the suggested changes, other changes were made by the drafter that are still not correct.

The analysis now states that sales of tangible personal property and taxable services by a nonprofit organization at an entertainment event are not taxable if entertainment does not exceed \$300. If the nonprofit held a seller's permit or its sales during a calendar year were on more than 20 days and were more than \$15,000, the sales at the entertainment event would not be exempt even though entertainment is paid \$300 or less.

If the drafter's language is preferred, it should be revised as follows:

Under current law, the sales of tangible personal property or taxable services made by a nonprofit organization at an event involving entertainment ~~is exempt from the sales tax and the use tax, are taxable~~ if the organization's payment for the entertainment ~~does not exceed~~ exceeds \$300. Under the bill, the sales of tangible personal property or taxable services made by a nonprofit organization at an event involving entertainment ~~is exempt from the sales tax and the use tax, are taxable~~ if the organization's payment for the entertainment ~~does not exceed~~ exceeds \$500.

5. **Effective date problems, if any, including transitional problems:** _____ Yes X No
(If yes, describe problem and suggested effective date or transitional language needed.)



State of Wisconsin
2005 - 2006 LEGISLATURE

LRB-0297/2

JK:kjfrs

RMR

DOA:.....Justus, BB0069 - Sales tax collected by nonprofit retailers; increase occasional sales threshold

FOR 2005-07 BUDGET -- NOT READY FOR INTRODUCTION

in 10-29-04

Do Not Gen

1 AN ACT ...; relating to: the budget.

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Under this bill, a retailer who is subject to the sales tax includes a person who makes any sale, regardless of whether the sale is mercantile in nature, of tangible personal property or certain services.

Under current law, a nonprofit organization that sells tangible personal property or services is required to have a seller's permit, if it sells property or services on more than 20 days during the year and the gross receipts from such sales exceed \$15,000. Under the bill, a nonprofit organization that sells tangible personal

property or services is required to have a seller's permit, if it sells property or services on more than 20 days during the year and the gross receipts from such sales exceed \$25,000.

exceeds
Under current law, the sales of tangible personal property or taxable services made by a nonprofit organization at an event involving entertainment *are subject to* ~~is exempt from~~ the sales tax and the use tax, if the organization's payment for the entertainment ~~does not exceed~~ \$300. Under the bill, the sales of tangible personal property or taxable services made by a nonprofit organization at an event involving entertainment ~~is exempt from~~ the sales tax and the use tax, if the organization's payment for the entertainment ~~does not exceed~~ \$500.

This bill will be referred to the Joint Survey Committee on Tax Exemptions for a detailed analysis, which will be printed as an appendix to this bill.

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4 under s. 77.52 (2) (a).

5 **SECTION 2.** 77.54 (7m) of the statutes is amended to read:

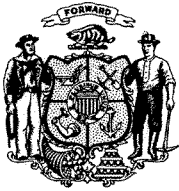
6 77.54 (7m) Occasional sales of tangible personal property or services, including
7 ~~but not limited to~~ admissions or tickets to an event; by a neighborhood association,
8 church, civic group, garden club, social club or similar nonprofit organization; not
9 involving entertainment for which payment in the aggregate exceeds \$300 \$500 for
10 performing or as reimbursement of expenses unless access to the event may be
11 obtained without payment of a direct or indirect admission fee; conducted by the
12 organization if the organization is not engaged in a trade or business and is not
13 required to have a seller's permit. For purposes of this subsection, an organization
14 is engaged in a trade or business and is required to have a seller's permit if its sales

1 of tangible personal property and services, not including sales of tickets to events,
2 and its events occur on more than 20 days during the year, unless its receipts do not
3 exceed \$15,000 \$25,000 during the year. The exemption under this subsection does
4 not apply to gross receipts from the sale of bingo supplies to players or to the sale,
5 rental or use of regular bingo cards, extra regular cards and special bingo cards.

6 **SECTION 9441. Effective dates; revenue.**

7 (1) NONRESIDENT RETAILER AND OCCASIONAL SALES. The treatment of sections
8 77.51 (13) (a) and 77.54 (7m) of the statutes takes effect on January 1, 2006.

9 (END)



State of Wisconsin
2005 - 2006 LEGISLATURE

LRB-0297/3

JK:kjf:pg

DOA:.....Justus, BB0069 - Sales tax collected by nonprofit retailers; increase occasional sales threshold

FOR 2005-07 BUDGET -- NOT READY FOR INTRODUCTION

1 AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau

TAXATION

OTHER TAXATION

Under current law, the state imposes a sales tax on all retailers at the rate of 5 percent of the gross receipts from the sale, lease, or rental of tangible personal property and the sale of certain services. For sales tax purposes, a retailer includes a seller who sells any tangible personal property or taxable service. A retailer who is subject to the sales tax must obtain a seller's permit, collect the sales tax, and remit the collected tax to DOR. The Wisconsin Supreme Court has held that a religious organization that sells tangible personal property is not a retailer subject to the sales tax, if the sales that the religious organization makes are not mercantile in nature. See *Kollasch v. Adamany*, 104 Wis. 2d 552 (1981).

Under this bill, a retailer who is subject to the sales tax includes a person who makes any sale, regardless of whether the sale is mercantile in nature, of tangible personal property or certain services.

Under current law, a nonprofit organization that sells tangible personal property or services is required to have a seller's permit, if it sells property or services on more than 20 days during the year and the gross receipts from such sales exceed \$15,000. Under the bill, a nonprofit organization that sells tangible personal

property or services is required to have a seller's permit, if it sells property or services on more than 20 days during the year and the gross receipts from such sales exceed \$25,000.

Under current law, the sales of tangible personal property or taxable services made by a nonprofit organization at an event involving entertainment are subject to the sales tax and the use tax, if the organization's payment for the entertainment exceeds \$300. Under the bill, the sales of tangible personal property or taxable services made by a nonprofit organization at an event involving entertainment are subject to the sales tax and the use tax, if the organization's payment for the entertainment exceeds \$500.

This bill will be referred to the Joint Survey Committee on Tax Exemptions for a detailed analysis, which will be printed as an appendix to this bill.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 77.51 (13) (a) of the statutes is amended to read:

2 77.51 (13) (a) Every seller who makes any sale, regardless of whether the sale
3 is mercantile in nature, of tangible personal property or taxable a service specified
4 under s. 77.52 (2) (a).

5 **SECTION 2.** 77.54 (7m) of the statutes is amended to read:

6 77.54 (7m) Occasional sales of tangible personal property or services, including
7 ~~but not limited to~~ admissions or tickets to an event; by a neighborhood association,
8 church, civic group, garden club, social club or similar nonprofit organization; not
9 involving entertainment for which payment in the aggregate exceeds \$300 \$500 for
10 performing or as reimbursement of expenses unless access to the event may be
11 obtained without payment of a direct or indirect admission fee; conducted by the
12 organization if the organization is not engaged in a trade or business and is not
13 required to have a seller's permit. For purposes of this subsection, an organization
14 is engaged in a trade or business and is required to have a seller's permit if its sales

1 of tangible personal property and services, not including sales of tickets to events,
2 and its events occur on more than 20 days during the year, unless its receipts do not
3 exceed \$15,000 \$25,000 during the year. The exemption under this subsection does
4 not apply to gross receipts from the sale of bingo supplies to players or to the sale,
5 rental or use of regular bingo cards, extra regular cards and special bingo cards.

6 **SECTION 9441. Effective dates; revenue.**

7 (1) NONRESIDENT RETAILER AND OCCASIONAL SALES. The treatment of sections
8 77.51 (13) (a) and 77.54 (7m) of the statutes takes effect on January 1, 2006.

9 (END)